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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

MOISES YANEZ VILLALPANDO,

Defendant and Appellant.

A132794

(Mendocino County
Super. Ct. No. SCUKCR1012745)

In a 2008 case, No. CR0884716, defendant Moises Villalpando pleaded guilty to transportation of oxycodone (Health & Saf. Code, § 11352, subd. (a)) and carrying a loaded firearm (former Pen. Code, § 12031, subd. (a)(1)). In a 2010 case, No. CR1012745, defendant pleaded guilty to possession of oxycontin (Health & Saf. Code, § 11350, subd. (a)). After several attempts at probation failed, the trial court, at a single hearing, imposed a four-year prison term in the 2008 case and an eight-month prison term in the 2010 case, the terms to run consecutively. On appeal, defendant contends the trial court failed to state reasons, as required, for imposing consecutive terms. We conclude defendant has waived this argument and, in any event, the trial court's failure to state reasons was harmless error. We therefore affirm.

BACKGROUND

We recite only those facts directly relevant to defendant's appeal. (See *People v. Garcia* (2002) 97 Cal.App.4th 847, 850, fn. 1.)

After defendant pleaded guilty in the 2008 and 2010 cases, the trial court in each case suspended imposition of sentence and placed defendant on probation. Probation was unsuccessful. After a string of probation violations and related proceedings, the trial court revoked probation in both cases one final time on April 27, 2011.

On June 17, 2011, the trial court sentenced defendant in both cases. It ordered a four-year prison term in the 2008 case and an eight-month prison term in the 2010 case, to “run consecutive.” At sentencing, the prosecutor and defense counsel argued for and against consecutive, as opposed to concurrent, terms. Defense counsel stated “I would ask the court to consider sentencing him to concurrent sentences I think the four-year mid-term in that one case, that’s a lot of time, and I think you’re sending the message for everyone” The prosecutor pointed out the two drug cases arose from conduct separated by two years, which “alone entitle [defendant] to consecutive sentences.” Although the trial court opted for consecutive, it did not state reasons for its decision, and defense counsel never requested a statement. Defendant filed notices of appeal in both cases.

DISCUSSION

Defendant contends the trial court’s failure to provide reasons for its sentencing decision was prejudicial error.¹

Our Supreme Court’s decision in *People v. Scott* (1994) 9 Cal.4th 331 (*Scott*), squarely forecloses defendant’s appeal. It holds “complaints about the manner in which the trial court exercises its sentencing discretion and articulates its supporting reasons cannot be raised for the first time on appeal.” (*Id.* at p. 356; see *id.* at pp. 351-353 [“Routine defects in the court’s statement of reasons are easily prevented and corrected if called to the court’s attention. As in other waiver cases, we hope to reduce the number of

¹ Defendant also contended the trial court erroneously calculated pretrial custody credits, but he has since obtained relief directly from the trial court on this matter. Defendant has withdrawn this aspect of his appeal.

errors committed in the first instance and preserve the judicial resources otherwise used to correct them.”].) Thus, while failure to state reasons for imposing a consecutive term is indeed error, a defendant waives the defect if he or she does not first object in the trial court. (*People v. Morales* (2008) 168 Cal.App.4th 1075, 1084 [applying *Scott* in this context].) The contrary cases defendant cites predate and do not survive *Scott*. (See *Scott, supra*, 9 Cal.4th at p. 353, fn. 16 [specifically disapproving of such cases, including *People v. Robinson* (1992) 11 Cal.App.4th 609, 613-614, on which defendant relies].)

Even if we considered the substance of defendant’s appeal, we would, in any event, conclude the trial court’s failure to state its reasons was harmless error. The attorneys’ arguments at sentencing provided the trial court with numerous reasons for and against consecutive terms and put the issue front and center. In particular, the prosecutor pointed out the two drug cases arose from conduct separated by two years. This single factor alone—separation in time—would support consecutive terms. (*People v. Davis* (1995) 10 Cal.4th 463, 552 [“Only one criterion or factor in aggravation is necessary to support a consecutive sentence.”]; Cal. Rules of Court, rule 4.425(a)(3) [one factor supporting a consecutive sentence is “[t]he crimes were committed at different times or separate places, rather than being committed so closely in time and place as to indicate a single period of aberrant behavior”].) We conclude it is not “reasonably probable that a result more favorable to the [defendant]” would be reached if the trial court, which was fully informed at sentencing, had another opportunity to sentence defendant on remand. (*People v. Gutierrez* (1991) 227 Cal.App.3d 1634, 1638 [finding harmless error]; see *People v. Davis, supra*, 10 Cal.4th at p. 552 [same].)

DISPOSITION

The judgment is affirmed.

Banke, J.

We concur:

Marchiano, P. J.

Dondero, J.